

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF NORTH CAROLINA

MITCHELL DANYELL BANKS,)	
)	
Plaintiff,)	
)	
v.)	
)	
SHERIFF DANNY ROGERS,)	1:22-cv-452
Individual and official)	
capacity, SERGEANT D. W.)	
COOKE, Individual and)	
official capacity, OFFICER)	
W. M. EVANS, Individual and)	
official capacity, OFFICER)	
J. M. ALLEN, Individual and)	
official capacity, and)	
TRAVELERS CASUALTY AND)	
SURETY COMPANY OF AMERICA,)	
)	
Defendants.)	

ORDER

This matter is before the court for review of the Order and Recommendation ("Recommendation") filed on June 23, 2022, by the Magistrate Judge in accordance with 28 U.S.C. § 636(b). (Doc. 2.) In the Recommendation, the Magistrate Judge recommends that this action be dismissed, but without prejudice to Plaintiff filing a new complaint, on the proper § 1983 forms, which corrects the defects of the present Complaint. The Recommendation was served on the Plaintiff on June 23, 2022. (Doc. 3.) Plaintiff timely filed Objections. (Doc. 4.) On November 7, 2022, Plaintiff filed a motion for recusal of this

court, (Doc. 7). After careful review, this court finds that the motion for recusal should be denied.

This court is required to "make a de novo determination of those portions of the [Magistrate Judge's] report or specified proposed findings or recommendations to which objection is made." 28 U.S.C. § 636(b)(1). This court "may accept, reject, or modify, in whole or in part, the findings or recommendations made by the [M]agistrate [J]udge . . . [O]r recommit the matter to the [M]agistrate [J]udge with instructions." Id.

This court has appropriately reviewed the Recommendation as well as Plaintiff's Objections and has made a de novo determination which is in accord with the Magistrate Judge's Recommendation. This court therefore adopts the Recommendation.

IT IS THEREFORE ORDERED that the Magistrate Judge's Recommendation, (Doc. 2), is **ADOPTED. IT IS FURTHER ORDERED** that this action be filed, and is hereby **DISMISSED** sua sponte without prejudice to Plaintiff filing a new complaint, on the proper § 1983 forms, which corrects the defects cited above.

The Clerk is directed to send Plaintiff § 1983 forms, instructions, an application to proceed in forma pauperis, and a copy of pertinent parts of Fed. R. Civ. P. 8 (i.e., Sections (a) & (d)).

IT IS FURTHER ORDERED that Plaintiff's motion for recusal of this court, (Doc. 7), is **DENIED**.

A Judgment dismissing this action will be filed contemporaneously with this Order.

This the 31st day of March, 2023.


United States District Judge